REPUBLIKA NG PILIPINAS
KAGAWARAN NG PANANALAPI
KAWANIHAN NG RENTAS INTERNAS

September 2, 2004

REVENUE MEMORANDUM ORDER NO. 46-2004

SUBJECT : Additional Supplement and Guidelines in Handling Letter Notices with Discrepancies Arising from Data Matching Processes as defined in Revenue Memorandum Order (RMO) Nos. 34-2004 and 30-2003, as amended by RMO Nos. 42-2003 and 24-2004, which remain Unserved, have been Served but are Without Response, or are Under Protest by Taxpayers.

TO : All Internal Revenue Officers and Others Concerned

I. OBJECTIVES

This Order is issued to:

1. Effectively utilize the information provided by the Third Party Information (TPI) Matching Program, by providing the policies and guidelines for the disposition of Letters Notices (LNs) that remain unserved, and for the treatment of taxpayers who:

   a. Refuse to respond to LNs issued to them; or
   b. Unreasonably or without valid reason, protest the discrepancies stated in the LNs issued to them and have continually refused to pay the deficiency taxes due as a result of the discrepancies.

2. Expedite the resolution of disputed assessments against taxpayers issued LNs under protest.

3. Reduce the inventory of LNs "Under Protest" and those "Without Responses."

4. Define the duties and functions of revenue officers concerned, in order to emphasize their responsibilities and accountability over LNs assigned to them.

II. POLICIES AND GUIDELINES

1. Conformably with the regulations that returns for which Letters of Authority are issued can no longer be amended, returns covering the periods or including transactions referred to in the LNs can no longer be amended.

   The returns referred to herein shall include income tax returns, VAT returns, and all other returns and schedules required to be submitted. Moreover, if there are no returns initially filed, the taxpayer may no longer file a return by way of a "late compliance" action.

2. The "**no-contact-audit approach**" provided in RMO No. 42-2003 shall refer to the manner in which the discrepancy in the LN was arrived at. Said discrepancy shall represent the results of the computerized matching of data/information from third party sources/providers vis-à-vis return information filed by the taxpayers, and not the results of an audit or investigation.

3. Those LNs for which no response have been received notwithstanding proper service and follow-up shall no longer be forwarded to the Special Concerns Group (SCG) [in case of SLS/SLP LNs] or the Technical Working Group (TWG) [in case of BOC LNs].

   In the case of those "no-response" LNs that involve discrepancies of *less than thirty percent (30%),* the Revenue Officer (RO) concerned shall endorse the case to the Assessment Division of the Region, or its equivalent office in the Large Taxpayers Service, for the issuance of a Preliminary Assessment Notice (PAN) or Final Assessment Notice (FAN), as the case may be, in accordance with the provisions of Revenue Regulations (RR) No. 12-99.

   However, if the discrepancy stated in the LN is *thirty percent (30%) and above,* the RO shall institute closure proceedings in accordance with the policies and procedures prescribed under RMO No. 31-2002.

4. In the event a taxpayer who has been issued an LN protests the accuracy of the data provided by third party sources (as opposed to erroneous encoding of return information in the ITS), the RO concerned shall, upon receipt of the Protest Letter of the taxpayer, evaluate the protest and require the latter to execute a Sworn Statement attesting to the alleged inaccuracies or errors in the TPI. The TPI provider (except BOC) shall also be required to execute a Sworn Statement attesting to the data provided.

   Enforcement action shall be undertaken in instances when, on the basis of the documents submitted by both the TPI providers and the taxpayer concerned, as well as other information available to him / her, the Regional Director / Head of the Large Taxpayers Service has reason to believe that there is an evasion of taxes that warrants said action. The Regional Director / Head of the Large Taxpayers Service shall decide on the most appropriate enforcement action (such as audit / investigation, surveillance, stock-taking) that will expedite the recovery of the unpaid taxes.

   The above enforcement action shall be in addition to the filing of criminal charges as may be warranted by the Commissioner or the Office of the Deputy Commissioner for Criminal Prosecution. For this purpose, the documents obtained by the RO from the taxpayer and the TPI source(s), as well as the evaluation of the Regional Director / Head of the Large Taxpayers Service, must be forwarded to the Deputy Commissioner within one (1) month from completion of the evaluation.

5. If the enforcement action decided in the preceding paragraph is the conduct of an audit / investigation, the audit to be conducted should – whenever possible – be an *issue-based audit focusing on the information provided by the TPI source(s) and the explanation furnished by the taxpayer.*

A comprehensive audit shall be undertaken *only when an issue-based audit is not feasible,* in which case, the RO shall observe the audit procedures and techniques under Revenue Audit Memorandum Order (RAMO) Nos. 1-2000, 2-95, 1-91 and 1-90. The RO shall also comply with the reporting requirements prescribed under RMO No. 53-98.

6. Inasmuch as the discrepancy has already been determined, the RO shall have a minimum of thirty (30) days and a maximum of sixty (60) days from submission of the Sworn Statement by the TPI source, to terminate the audit/investigation.

7. The Revenue District Office (RDO) / Large Taxpayers District Office (LTDO) / Large Taxpayers Audit and Investigation Division (LTAID) I and II shall submit a List of LNs "Under Protest" Selected for Audit in a format prescribed herein, to be attached to the Monthly / Quarterly Status Report on LNs Issued, to be submitted to the Audit Information, Tax Exemption and Incentives Division (AITEID), copy furnished the Office of the Deputy Commissioner, Special Concerns Group, for monitoring purposes.

III. PROCEDURES

Action on LNs that remain Unserved

1. If, after having exhausted all means to locate a taxpayer (as observed in the service of LAs), or, as in the case of corporate taxpayers, the corporate officers of the concerned establishment, the Revenue Officer assigned to a particular LN is unable to ascertain their whereabouts, he shall submit to the Revenue District Officer / Chief of the LT Division/District Office the appropriate report attesting that the taxpayer / corporate officers cannot be located.

2. The Revenue District Officer / Chief of the LT Division/District Office shall then forward the report to the AITEID, which shall coordinate with the National Investigation Division in seeking the assistance of the National Security Council (NSC) in locating the said taxpayer / corporate officers.

3. If the NSC is unable to locate the subject taxpayer / corporate officers, and has informed the Bureau in writing of such development, the same shall be considered as sufficient basis for the cancellation of the concerned LN. The AITEID shall then inform the concerned District of the cancellation of the LN, and remove the same from the inventory of LNs referred to the District for service.

   However, if the NSC has located the concerned taxpayer / corporate officers, and has duly informed the Bureau of the whereabouts of the taxpayer / corporate officers, the information shall be forwarded to the AITEID, which shall advise the District Office / LT Division/District Office of the new address of the taxpayer / corporate officers.

   If the taxpayer / corporate officers is / are located in a different District, AITEID shall make the necessary corrections in the concerned LN, and refer the amended LN to the appropriate District Office / LT Division/District Office.

Action on Protested LNs due to TPI discrepancy

The Revenue Officer assigned to handle the Letter Notice shall:

1. Evaluate the merits of the taxpayer's Protest by:

    1.1 Requiring the taxpayer to submit the necessary schedules and supporting documents to substantiate his claims.

    1.2 Reconciling the Schedule of Sales / Local Purchases submitted by the taxpayer against the Details of Taxpayer's Customers / Suppliers' Records (DTCS) culled from the Quarterly Summary List of Sales/Purchases submitted by taxpayer's suppliers and customers, respectively.

    1.3 Reconciling the Schedule of Importation submitted by the taxpayer against the Details of Importation with Return Information Matching (DIRIM) culled from data provided by the Bureau of Customs (BOC).

    1.4 Checking for the propriety of the transactions reflected in the schedules submitted by the taxpayer by validating against source documents (e.g. sales invoices, official receipts, import entry declarations, etc.).

2. Require the taxpayer to execute a Sworn Statement (Annex A) attesting to the veracity of the schedules and authenticity of the documents presented / submitted.

3. Obtain Sworn Statements from TPI sources (Annexes "B" and "C") attesting to the veracity of the data provided.

    3.1 If the TPI source is registered in the RDO / LTDO / LTAID having jurisdiction over the subject taxpayer, the RO shall:

        3.1.1 Prepare "Confirmation Requests" (using the format prescribed in Annex "C" of RMO No. 30-2003 to be signed by the heads of the concerned RDO / LTDO / LTAID) for purposes of verifying the accuracy of the figures appearing in the DTCS

        3.1.2 If the TPI source agrees with the figures in the "Confirmation Requests" (CR), secure a Sworn Statement from the TPI source to allow the RO to build a case against the taxpayer.

    3.2 If the TPI source is outside the jurisdiction of the RDO / LTDO / LTAID where the taxpayer is registered, the RO shall:

        3.2.1 Coordinate with the RDO / LTDO / LTAID where the TPI source is registered, in order to:

            a. Prepare a CR to be transmitted and signed by the RDO / LTDO / LTAID having jurisdiction over TPI source (CRs should be coursed thru the RDO / LTDO / LTAID where the taxpayer is registered);

b. Secure a sworn statement from the TPI source thru the RDO / LTDO / LTAID having jurisdiction over the same; and,

c. Assist the heads of the concerned RDO / LTDO / LTAID in the preparation of Monthly Status Report on Confirmation Requests Transmitted (Annex "D") outside the RDO / LTDO / LTAID of the TPI source and submit the same to the SCG, for monitoring purposes.

4. Provide the taxpayer a brief "grace period" (no more than ten [10] days) to reconcile the figures in his Sworn Statement against those of the TPI source.

5. If the taxpayer interposes no further objection to the TPI source's Sworn Statement, compute the deficiency tax(es) using the formula prescribed in BIR Forms 2112-A, 2112-B or 2112-C, whichever is applicable.

6. If the taxpayer objects / protests the Sworn Statement of the TPI source –

6.1 The Revenue District Officer / Chief of the LT Division / District Office concerned shall recommend to the Regional Director / Head of the Large Taxpayers Service, the most appropriate enforcement action (such as audit / investigation, surveillance, stock-taking) to expedite the recovery of the unpaid taxes.

6.2 In the event that the Regional Director / Head of the Large Taxpayers Service shall approve the conduct of an audit / investigation, the RO concerned shall implement the audit procedures and techniques laid down in RAMO Nos. 1-2000, 2-95, 1-91 and 1-90.

Should the conduct of surveillance and / or stock-taking activities be approved, the same shall be conducted in accordance with established Bureau rules and regulations on these enforcement actions.

6.3 In the conduct of audits / investigations, a case must be terminated by the RO within thirty (30) days to sixty (60) days from the receipt of the TPI source's Sworn Statement.

In the event that the report cannot be rendered within the prescribed period due to constraints attributable to the taxpayer, indicate the reason(s) in the List of LNs "Under Protest" Selected for Audit (Annex "E") to be attached to the Monthly / Quarterly Report on LNs Issued, to be submitted to the ATTEID, copy furnished ODCIR, SCG, for monitoring purposes

6.4 In preparing the tax docket, the RO shall observe the mandatory reporting requirements set forth in RMO No. 53-98

6.5 The entire docket of the case must be transmitted to the Assessment Division of the Region, or the equivalent office in the LTS, for review and issuance of Preliminary Assessment Notice (PAN) or Final Assessment Notice (FAN), as the case may be.

7. The dockets and other pertinent records of closed LNs shall be forwarded to the Records Division (for LNs generated at the National Office) or to the Regional Administrative Divisions (for LNs generated by the Regional Offices), for archival, in observance of the rules and regulations on the archival of official Bureau records that are set forth in Revenue Memorandum Order No. 51-75.

IV. REPEALING CLAUSE

The rules and policies laid down under RMO Nos. 34-2004 and 30-2003, as amended by RMO Nos. 42-2003 and 24-2004, that are not otherwise inconsistent with this Order shall remain in force.

V. EFFECTIVITY

This Order shall take effect immediately.

(Original Signed)
GUILLERMO L. PARAYNO, JR.
Commissioner of Internal Revenue

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